

DOCKET

11-GEN ADMIN-01

DATE NOV 30 2011

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STATE OF CALIFORNIA
ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

Standing Order re:)
Proceedings and Confidentiality) Docket No.: 11-GEN ADMIN-01
Applications - Procedural Requirements)
For Filing, Service and Docketing)
Documents with the Energy)
Commission)
_____)

I. PURPOSE OF ORDER

This Standing Order is intended to clarify and, as appropriate, modify the regulatory procedures associated with submitting/filing documents to the California Energy Commission (Energy Commission), and serving documents on the Commission in administrative proceedings, in order to reduce or eliminate the administrative burden of parties and members of the public who participate in Commission proceedings.¹ The following rules are hereby adopted pursuant to that power.

II. FILING OF ELECTRONIC DOCUMENTS UP TO 5 MB

A. Existing Requirements

Existing Commission regulation² section 1209.5, subd. (a), allows for submission of electronic documents to the Commission on either electronic media, by internet e-mail, or “[a]ny other media and number of copies authorized by the Executive Director.” Section 1209 also describes the format and other procedural requirements for submission of electronic documents, including that a paper copy be submitted with any electronic copies submitted as specified in section 1209.5. Section 1209, subd. (d)(2), restricts the maximum file size of documents submitted by electronic transfer, or e-mail, to five megabytes (5 MB).

¹ This order does not affect the legal requirements set forth in the Code of Civil Procedure, the California Rules of Court, or other statutes or regulations, which specify the manner of service of administrative or judicial process upon the Commission when the Commission is a party to a judicial or other agency’s administrative proceedings.

² The Commission’s regulations are in Title 20, California Code of Regulations,

B. Modifications to Existing Requirements

1. **Effective immediately, non-confidential electronic documents of 5 MB (i.e., megabytes) or less may be submitted in electronic format only, i.e. paper copies are NO LONGER required. This includes:**
 - a. **Filing and service of documents on the Commission, Commissioners, and the Chief Counsel in administrative proceedings before the Commission.** (See, e.g., §§1231 [filing of administrative complaints]; 1237 [post-certification complaints alleging non-compliance with a power plant and site certification decision]; Chapter 3 of Division 2 of Title 20, 1301 et seq. [data collection]; Chapter 5 of Division 2 of Title 20, 1701 et seq. [power facility site certification].)
 - b. **Submitting public comment.** (§ 1202, subd. (b).)
 - c. **Service on Commission staff as a party (see below) in administrative proceedings before the Commission.** (§§ 1210, subd. (a); 1712.5.)
 - d. **This Order eliminates the requirement for submission of the paper copy** required by section 1209, subd. (c), for documents of 5 MB or less that are filed electronically.
 - e. Electing to submit to (file with), or serve documents upon, the Commission in an electronic version pursuant to this Order (i.e., file sizes of 5 MB or less) shall be **instead of** the requirement to submit paper copies. Therefore, if both a hard copy and an electronic copy of the same document is submitted, they will be docketed as distinct and separate records upon receipt. Deadlines will be applied to the records in the order they are received.
 - f. Parties or interested persons may continue to file paper documents if they choose to do so. Electronic filing is not required.
2. **Serving documents on the Chief Counsel of hard or electronic copies of administrative complaints and requests for investigation (title 20, California Code or Regulations section 1231), petitions for reconsideration of commission decisions or orders (section 1720), or requests to copy or inspect confidential documents (section 2506) shall be made by delivery to the Docket Unit, using the Document Service Form indicating that service on the Chief Counsel is requested. Such documents will be deemed filed or served on the Chief Counsel as of the time of receipt by the Docket Unit. Service on the Chief Counsel pursuant to sections 1231, 1720 or 2506 must be indicated by checking the appropriate box on the Document Service Form, which is available at the Dockets Unit.**

C. This Order does not alter the following requirements:

- a. **A party to a proceeding must properly serve a hard or electronic copy of its documents, as appropriate, on all other parties (except CEC staff) to a proceeding** pursuant to sections 1209, subdivision (f), and 1210. Electronic documents larger than 5 MB must continue to be accompanied with a hard copy, unless otherwise specifically requested by the receiving party.

Note that the above requirement may be modified by order of a specific Committee or Presiding Member to remove the requirement to provide a hard copy where an electronic copy is sent. As an example of such a modification see paragraph C.4, below, which applies only if adopted by a specific Committee.

- b. **Documents are not submitted to or served upon the Commission until received by the Docket Unit.** (§ 1209, subd. (e).)
- c. During a hearing, documents may be submitted to the Commission by providing them to the Presiding Member. (§ 1202, subd. (b).)
- d. **The electronic version of any electronically filed document must be complete, including any attachments.** Documents may not be divided into several parts to create multiple electronic files each of 5 MB or less in order to file electronically only. Documents less than 5 MB should not be divided when submitted to Dockets but should be provided as one complete document.
- e. **Except as provided below in paragraph f, electronic copies will be deemed filed upon receipt so long as they are within the size limitation and can be safely accessed.** Files of sizes larger than 5 MB on electronic media (i.e., on compact disks) must continue to be accompanied by the requisite number of hard copies. (See §§ 1209, subd. (c), 1209.5, subd. (a), 1706, 2322.)
- f. **All documents, whether electronic or otherwise, received after 5 p.m. on a business day will be deemed received on the next business day.** The office hours of the Energy Commission are from 8 a.m. until 5 p.m. of each day from Monday to Friday, inclusive, other than legal holidays. (Gov. Code, § 11020; Code Civ. Proc., § 10; § 1003.)
- g. **Any portions of the submittal which cannot be filed in electronic format due to size or other technical restrictions must be physically received by the Commission by any applicable due date.**
- h. **To be filed, all electronically submitted documents must be accessible to the Dockets staff.** Electronic files that are password protected, contain viruses, or for other reasons cannot be safely accessed will be rejected. Submittals of MP3 files or videos via email will be rejected--these types of submittals shall be on compact disks.

D. This action is taken pursuant to section 1209.5, subdivisions (a)(4) and (d)(4), and section 1209, subdivision (c).

E. Additional Guidance to Improve Submission of Records.

1. In some instances, electronic copies created by scanning a printed document are unable to be word searched, read by programs that assist the visually impaired, or easily read on small screen devices such as smart phones. The better method is to create a .pdf (Portable Document Format) file by printing to a “virtual printer” that creates a .pdf file from within the same program that is used to print a paper copy.
2. Signatures may be indicated on electronic copies by embedding a scanned signature graphic, "Original Signed By" or similar words, or a second - scanned -copy of the signature page may be appended into the electronic file.

F. The Executive Director recommends that Presiding Members of proceedings exercise their discretion granted in section 1210, subdivision (a), to adopt an order establishing the following provisions to direct that all parties to a proceeding may be served with electronic copies of written materials filed in the proceeding:

“Pursuant to Cal. Code Regs., title 20, section 1210, subd. (a), until a party indicates to the Presiding Member or Hearing Officer that it requires a hard copy, an e-mailed copy of all electronic documents of 5 megabytes maximum file size pursuant to section 1209.5 is sufficient for service in this proceeding. No hard copy of an e-mailed document need be provided. Where a party is marked on the Proof of Service List for this proceeding as “hard copy required” or similar words, a paper copy of all written material filed by any party in this proceeding shall be served in person or by first class mail, or other equivalent delivery service, with postage prepaid. Regardless whether a party has indicated a preference for hard copies, documents larger than 50 pages may alternatively be sent in the form of an electronic file recorded on a compact disk rather than as a paper copy, provided that the party is offered the opportunity to request a paper copy.”

III. APPLICATIONS FOR CONFIDENTIALITY

An application to keep a record confidential shall be submitted directly to the Docket Unit on electronic media, but not by email. Five electronic (5) copies of the record for which confidentiality is sought must be submitted, on separate media, each marked on the media with the title of the record and “confidential.” (§ 1209.5, subd. (a)(4).) The application may be on a sheet separate from, but attached to, the record. The application will then be acted upon by the Executive Director in consultation with the Chief Counsel of the Energy Commission. (§ 2505, subd. (a).)

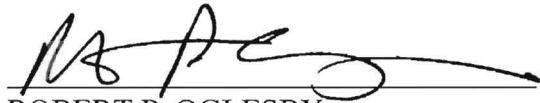
IV. CONCLUSION

This Order applies to the following kinds of Commission proceedings, unless and until it is subsequently revised, or expressly modified in a particular proceeding by a specific order:

- service of process on the Commission staff in the Commission's administrative proceedings;
- administrative complaint proceedings;
- energy data collection, and;
- power facility site certification proceedings.

The Executive Director expects to revise this Standing Order on a periodic basis, as further opportunities for improvement are identified. **Questions about how to send comments or documents to the Commission should be directed to the Public Adviser, Jennifer Jennings, at (916) 654-4489, 800-822-6228 (toll free) or publicadviser@energy.state.ca.us.** Comments on the effectiveness of these changes are requested and may be directed to the attention of Jeffery Ogata, Assistant Chief Counsel, at (916) 653-1151, or jogata@energy.state.ca.us.

November 30, 2011



ROBERT P. OGLESBY
Executive Director
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